IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPEALLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO.3849 OF 2004
IN
CRIMINAL APPEAL NO. 1073 OF 2004

Bharat Gulabrao Borge ...Applicant
Vs.
The State of Maharashtra & Anr. ...Respondents

Mr.J.Shekhar, Adv. i/b. J. Shekhar & Co. for Applicant
Mr.A.M.Shringarpure, A.P.P. for Respondents

CORAM: V.M.KANADE,J.
DATED: 21ST SEPTEMBER, 2004.

P.C.

1. Heard learned Counsel appearing on behalf of the Applicant and learned A.P.P. for the State. This is an application for bail filed by the Applicant who is charged under Section 376 (2)(f) of Indian Penal Code and was sentenced to undergo R.I. for 7 years and to pay fine by the trial Court. The appeal has been admitted. The prosecutrix is a minor girl. The accused had committed rape on 10 years old girl who was working as a maid servant in his house. Medical evidence suggests that the injury and rupture of hymen within six days from the date of which she is examined.

2. Learned Counsel appearing on behalf of the Applicant has strongly urged that the appellant was on bail in trial Court and that he is not likely to abscond. He has further filed additional paper book and has taken me to the evidence of three witnesses.

He submitted that there was delay in filing the F.I.R. There was no resistance from the prosecutrix. Further she has made improvements in her statement by stating that the accused had kept the tape-recorder on high volume. Further she had attended the school for four days and there after had informed her mother. She has been examined by the Doctor on sixth day. No other injuries were found. The learned Counsel for the Applicant has also drawn my attention to the evidence of the defence witness who has stated that the accused was present at Amboli for the period from 5.7.2003 to 10.7.2003 from 9.30 to 18.00 hours on the day. He submitted that therefore it is a fit case where the accused is entitled to be released on bail.

3. The above submissions are strongly opposed by the learned A.P.P. appearing on behalf of the State. He has taken me to the evidence of the prosecutrix who has stated that the accused had put his hand on her mouth in order to ensure that even if she screams nobody would hear her and then she was put in fear of death by the accused. Therefore, the incident was narrated by her to her parents.

4. In my view it is not a fit case where the accused/applicant is entitled to be released on bail. The trial Court has convicted the accused/applicant under Section 376(2)(f) of the

Indian Penal Code. The prosecutrix was young girl of 10 years of age. Medical evidence supports the case of the prosecution along with the own evidence of prosecutrix. Application for bail is therefore rejected. However, the applicant is at liberty to apply for a fixed date of hearing of the Criminal Appeal.

5. The applicant has already tendered the paper book of proceedings of the trial Court. Record and Proceedings to be called immediately on urgent basis. On the Record and Proceeding being received or in the alternative if the complete paper book of the
record is filed by the applicant liberty to the applicant to apply for the fixed date of hearing. If the appeal for some reason is not heard within a period of six months, liberty to the applicant to apply for the fixed date of hearing. with these directions the application for bail is rejected.

JUDGE